

REMARKS

The Examiner requires election of:

- I. Claims 1-8, 10-16, 28 and 29
- II. Claims 17-21, or
- III Claims 22-26

Applicants elect group I, claims 1-8, 10-16, 28 and 29.

The Examiner further requires election of one of the following species:

- I. FIGS. 1 and 2
- II. FIGS. 3 and 4
- III. FIG. 5
- IV. FIG. 6
- V. FIG. 7
- VI FIG. 8

Applicants elect species 1, FIGS. 1 and 2.

Claims 1, 2, 3, 4, 5, 6, 8, 10, 12, 13, 14, 15, 16 and 29 read on the elected species.

This election is made with traverse.

Claim 28 should also be examined, and Species II, V and VI should be rejoined with Species I for the following reasons:

In the previous official action dated November 29, 2006, the Patent and Trademark Office (PTO) indicated that claims 13, 14, and 16 are allowed and claims 28 and 29 contain allowable subject matter. Examiner Spahn repeated this in the status of claims in the Advisory Action dated March 14, 2007, and Applicant filed an RCE with amendments including an amendment to overcome the objections to claims 28 and 29.

The present species requirement divides the previously allowed/allowable claims into different species, because claims 13, 14, 16 and 29 read on species I and II, and claim 28 reads on species V and VI.

Applicants thank the Examiner for her courtesy to their representative in a telephone interview on July 18. The Examiner stated that she believes it necessary to do a completely new search and examination starting from scratch, and that examination of all of the claims previously indicated as allowable would be an undue burden. The Examiner stated that she was not aware of specific prior art material to the previously allowed claims, but that she believed that additional class(es) or subclass(es) should be searched. The Examiner stated her position that this application should not be treated any differently than if no prior search or examination had been conducted.

Even assuming that the Examiner intends to search in additional classes or subclasses, claim 28, which reads on species V and VI has already been searched, examined and found to contain allowable subject matter by two previous examiners.

M.P.E.P. § 706.04 recites:

PREVIOUS ACTION BY DIFFERENT EXAMINER

Full faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something. *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 126 F. Supp. 2d 69, 139, 57 USPQ2d 1449, 1499-50 (D. Mass. 2001).

Thus, the M.P.E.P. does not support the restriction between the species as laid out in the Action.

Further, even if the Examiner does supplement the searches that have already been done by two previous Examiners, the Examiner is not starting from scratch as she suggested in the interview. The Examiner already has the benefit of the search and analysis previously performed by her two colleagues (who both found claims 13, 14, 16, 28 and 29 to contain allowable subject matter), and the Examiner is merely supplementing the search and examination by two previous examiners.

Moreover, M.P.E.P. § 803 requires that, "If the search and examination of all the claims in an application can be made without serious burden, **the examiner must examine them on the merits**, even though they include claims to independent or distinct inventions." [emphasis added].

Whatever work the Examiner may feel is necessary to supplement the search previously done on claims 13, 14, 16, 28 and 29 which have been found to contain allowable subject matter, her burden is lessened considerably by the search and analysis previously done by two Examiners.

Therefore, Species V and VI should be rejoined with species I and examined.

Applicants submit that claims 1, 2, 3, 4, 5, 6, 8, 10, 12, 13, 14, 15, 16, 28 and 29 should all be examined and allowed in this application.

In view of the foregoing amendments and remarks, Applicant submits that this application is in condition for allowance. Early notification to that effect is respectfully requested.

Appl. No. 10/758,154
Amdt. dated July 19, 2007
Reply to Office action of June 19, 2007

The Assistant Commissioner for Patents is hereby authorized to charge any additional fees or credit any excess payment that may be associated with this communication to deposit account **04-1679**.

Respectfully submitted,

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Steven E. Koffs, Reg. No.: 37,163
Attorney For Applicants

DUANE MORRIS LLP
30 South 17th Street
Philadelphia, Pennsylvania 19103-4196
(215) 979-1250 (Telephone)
(215) 979-1020 (Fax)